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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,193	12/11/2000	Frank Abdullovski	05-484	1736

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BACHMAN & LAPOINTE, P.C.
900 CHAPEL STREET
SUITE 1201
NEW HAVEN, CT 06510

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/735,193	Applicant(s) ABDULLOVSKI, FRANK	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The response requests correction of the status of this application from a continuation-in-part to a continuation without any argument as to why it should be changed. Is the urging being made that 09735193 is the identical specification found in 09/305457? The issue of correction will be held in abeyance pending further information.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vonderhorst et al ('610), in view of the USDA application (Snak King-3/13/85), in view of applicant's admission of the prior art, further in view of Super Marketing (6/21/91), and Product Alert (7/20/92), further in view of Product Alert (6/9/97), Snack World (4/97), Confectioner Tobacconist Newsagent(CTN-2/15/91, p.15), Snack World (10/88), Baking and Snack (2/94) and AC Nielsen (6/2/86).

In regard to claim 4, Vonderhorst et al, as further evidenced by Snak King, teach that it was conventional in the art to provide a combination package, for retail sale, comprising a large package, a plurality of snack chips loosely contained in the large package and a dip containing package loosely contained in the large package along with the chip products. Claim 4 differs from Vonderhorst et al and Snak King in the particular structure of the dip containing package. That is, claim 4 recites a conventional soufflé condiment cup whereas Vanderhorst et al and Snak King discloses

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pouches/packets for the dip/condiment. As evidenced by applicant's admission of the prior art (e.g. mentioned on page 1 and fully described on page 4,col. 1 of the specification), the soufflé type cup structure with its so-called air tight overlay (i.e. its lid), is notoriously conventional. These containers have been used in fast food restaurants for many years. To modify Vanderhorst et al, as further evidenced by Snak King, and substitute one conventional food containing package structure for another conventional food containing package structure, for its art recognized and applicants intended function would therefore have been obvious. Super Marketing and Product Alert (7/20/92) can be relied on as further evidence of the conventionality of providing a dip in the same bag as a snack product. Product Alert (6/9/97) and Snack World (4/97), although packaging both a bag of chips and a cup of condiment/dip in a second outer bag, nevertheless teaches that it was conventional to merchandise a dip containing cup along with a bag of chips. Confectioner Tobacconist Newsagent(CTN) describes a package that is a bag and a snack product with dip. The CTN article also comes with a photo that shows a conventional cup with a flexible pull back lid with the snack being dipped into the cup, which clearly contains the dip. Although the cup is clearly associated with the bag and snack, it is not clear what the physical relationship is between the snack, cup and bag. In any case, the CTN article further evidences the conventionality of associating the three elements in question. Snack World (10/88), Baking & Snack, and AC Nielsen are relied on as further evidence of the conventionality of chip/dip combinations. It is noted that claim 4 recites that the chips are tortilla chips and the dip is bean or cheese. Once it was known to package a snack and an

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appropriate dip/condiment, the particular conventional products one chooses to package would, of course, have been an obvious matter of choice. Vonderhorst et al, for example teaches nachos and salsa, whereas Product Alert (6/9/97) discloses tortilla chips and salsa and Snack World (10/8) and Baking & Snack disclose cheese, bean and salsa dips are, of course, conventional. In regard to claim 6 it would have been obvious to have a plurality of tortilla chips and a dip containing conventional soufflé style cup for the reasons given above. In regard to claims 8 and 9, which recite a large bag sealed at top and bottom, Snak King, Super Marketing, and Product Alert (7/20/92) all teach it was notoriously conventional to not only employ bags for chips but to also include a package of dip/condiment therein. To modify the combination and substitute one conventional package for another conventional package for its art recognized and applicants intended function would have been unequivocally obvious. Top and bottom seals are conventional in form/fill/seal packaging. See, for example, the Cape Cod Ripples bag Product Alert (7/20/92). In regard to claims 12 and 13, the art taken as a whole teaches that the inner package is not connected to the larger package (e.g. Vonderhorst et al).

All of applicants remarks, filed 8/18/05, have been fully and carefully considered but are not found to be convincing. It is urged that Vonderhorst et al teaches away from the invention since he teaches a bandoliered item. Vonderhorst et al is not being relied on to teach how the inner package is placed in the outer package nor does he have to for the rejection to be proper. Vonderhorst et al is just being relied on for his teaching of the prior art that it was known to place an inner package of dip in an outer package of

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snack food – a fact evidenced by a number of the references taken as a whole. Note, too, that applicant is claiming an article and not the method of making it. How the inner package is filled into the outer package is irrelevant. Finally, it is further noted in this regard, that cups with flexible lids such as the conventional soufflé cups have been formed and sealed to produce a bandoliered effect, so that Vonderhorst et al could certainly package such products. As for the urging relative to age, patentability is predicated on what the art taken as a whole teaches at the time of applicant's invention and not on the age of the references. Note, too, patentability is predicated on the claims being both novel and unobvious. Finally, it does not appear that claim 4 reads over snacks inside a bag inside another bag. The snacks could still be readable on loosely contained in the outer bag. In any case, even if the claim was more definitively limiting, it would still not be patentable for the reasons given above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
2/15/06